



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: July 9, 2014

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary *Ben Brancel*

SUBJECT: **ATCP 127 Direct Marketing: Telephone Solicitations; No Call List; Emergency Rule**

This is to inform you that the department will be adopting the attached emergency rule related to Direct Marketing: Telephone Solicitations; No-Call List. This emergency rule will take effect on August 1, 2014, and will remain in effect until December 29, 2014. The department can apply for two 60-day extensions to the rule for a total of 270 days. If granted, the emergency rule could be extended until April 28, 2015.

Related Statutes and Rules

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 100.20 (2), Stats., to promulgate rules forbidding trade practices which DATCP determines to be unfair, and to prescribe fair trade practices. Section 100.52, Stats., directs DATCP to establish by rule a registration system for telephone solicitors that provides DATCP with proof that the telephone solicitor has complied with federal law in obtaining the state do-not-call registry.

Section 100.20(1), Stats., requires trade practices in business to be fair. Unfair trade practices are prohibited. DATCP has rulemaking authority under s. 100.20 (2), Stats., to regulate unfair trade practices through administrative rules.

Section 100.52, Stats., governs telephone solicitations. Among other things, it directs DATCP to establish a registration system for telephone solicitors that provides DATCP with proof that the telephone solicitor has complied with federal law in obtaining the state do-not-call registry.

Chapter ATCP 127, Subchapter II, Telephone Solicitations, was promulgated under DATCP's authority to regulate unfair trade practices. Among other things, this subchapter requires telephone solicitors to disclose their name and prohibits them from using fictitious names or misrepresenting their identity, affiliation, location or characteristics.

The existing Chapter ATCP 127, Subchapter V, Telephone Solicitations; No-Call List, implements s. 100.52, Stats. This subchapter establishes mechanisms for telephone customers to enter their numbers onto the no-call list that is compiled by the state and for telephone solicitors to register with DATCP to obtain the list.

Agriculture generates \$59 billion for Wisconsin

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An equal opportunity employer

Plain Language Analysis

Background

Section 100.52, Stats., established the Wisconsin no-call program in 2001. DATCP promulgated chapter ATCP 127, subchapter V in 2002. This law required the department to create a no-call list and prohibited telephone solicitors from calling residential customers on the list. Residential customers who did not want to receive unsolicited commercial calls provided their telephone number and zip code to DATCP every two years to remain on the non-solicitation list.

The law also required the department to enact a rule that requires solicitors to register with DATCP and pay an annual fee to obtain the no-call list and solicit residential customers located in Wisconsin.

The no-call law provides exceptions to the prohibition against calls made to Wisconsin residents by an unregistered solicitor. For example, calls made to current clients, calls made to persons who have consented to receive the call, and calls made on behalf of non-profit and political organizations, may be made by solicitors who have not registered with the department.

The law also prohibits telephone solicitors from making pre-recorded telephone solicitations to either residential or business customers, and from making telephone calls to business customers who ask them in writing to not make the calls.

The law was amended in 2008 to prohibit telephone solicitors from calling cell phones on the state no-call list. The law was amended in 2012 to prohibit telephone solicitors from sending text messages to residential customers on the state no-call list.

The Federal Trade Commission (FTC) maintains a federal do-not-call registry. Under the federal do-not-call program, Wisconsin residents may permanently register their numbers on that list.

The Wisconsin no-call law was most recently amended by 2013 Act 234 which has eliminated the separate, DATCP-maintained Wisconsin no-call list. As of August 1, 2014, Wisconsin residents who do not want to receive unsolicited telephone calls or texts from telemarketers will only need to sign up on the FTC do-not-call registry without any need to re-register, and all telephone numbers on the existing Wisconsin no-call list will be transferred to that registry. Under the new state law, telephone solicitors must register with the FTC and obtain and follow the Wisconsin portion of the federal do-not-call registry (state do-not-call registry). Telephone solicitors shall continue to register with DATCP, and DATCP shall continue to administer and enforce the Wisconsin no-call law.

Rule Content

General

This emergency rule does all of the following:

- Establishes updated registration requirements for telephone solicitors.
- Repeals portions of the rule made obsolete by 2013 Act 234.

Registration requirements

This emergency rule updates registration requirements for telephone solicitors. This rule requires telephone solicitors to provide DATCP with proof of registration with the FTC and the ability to obtain updated do-not-call registry information. The federal Subscription Account Number (SAN) will serve as proof of registration.

Obsolete rule provisions

This emergency rule repeals sections of the existing rule that became obsolete as a result of the statutory change. Sections of the rule that are repealed include those requiring consumers to register for the no-call list with DATCP, DATCP to provide the no-call list to telephone solicitors on a quarterly basis, and telephone solicitors to pay certain supplementary fees related to the provision of the no-call list.

Summary of and Comparison with Existing or Proposed Federal Statutes and Regulations

Federal Programs

The Federal Trade Commission (FTC) and Federal Communications Commission (FCC) administer the Telephone Consumer Protection Act (TCPA) which establishes the national do-not-call registry. Residential customers can permanently register their telephone numbers on the federal do-not-call registry.

Surrounding State Programs

Many states have do-not-call programs. Several states maintain their own do-not-call list. Others, including Illinois, Michigan, and Minnesota, have laws allowing for state enforcement of do-not-call provisions, but rely on the FTC's registry rather than maintaining their own. Iowa encourages its residents to sign up on the federal do-not-call registry.

Summary of Factual Data and Analytical Methodologies

To develop this rule, DATCP reviewed federal and state laws related to telephone solicitations, data related to telephone solicitor registration, past enforcement actions, and consumer complaints.

Analysis and Supporting Documents used to Determine Effect on Small Business

The effect on small business was determined by reviewing estimates of costs a business would incur in order to comply with the law.

Effect on Small Business

This rule will, generally, have minimal impact on business. This rule might affect the following businesses in the following ways (many of these businesses are "small businesses"):

Telephone solicitors that are currently registered with DATCP but not with the FTC.

Under s. 100.52, Stats., and this rule, telephone solicitors will be required to register with DATCP and with the FTC. Most telephone solicitors have been registered with both DATCP and the FTC and will not be impacted by this requirement. The few solicitors who have only registered with DATCP will incur an additional registration fee with the FTC. The first five area codes in a national do-no-call registry subscription are free, so this annual access fee would be \$59 for the 6th Wisconsin area code.

Offsetting this added fee, telephone solicitors will no longer be required to pay the following fees:

- \$25 for each additional email address to receive a compact disc containing the no-call list.
- \$25 for each mailing address to receive a compact disc containing the no-call list.
- \$1,000 for each mailing address to receive the no-call list in a hard-copy printed form.

Many of the businesses affected by this rule are “small businesses.” However, given the subject matter, there are very few accommodations or special exceptions that can be made for small businesses.

DATCP Contact

Questions and comments (including hearing comments) related to this rule may be directed to:

Jennifer Heaton-Amrhein
Department of Agriculture, Trade and Consumer Protection
P.O. Box 8911
Madison, WI 53708-8911
Telephone (608) 224-5164
E-Mail: jennifer.heatonamrhein@wisconsin.gov

**WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
EMERGENCY RULE**

- 1 The Wisconsin department of agriculture, trade and consumer protection adopts the following
2 emergency rule *to amend* ATCP 127, subchapter V (Title) and 127.82 (2) *to repeal* ATCP
3 127.81 (3) (c), (d), (e) and (Note) and 127.82 (3), (4), (5), (6), and (7); *to repeal and recreate*
4 ATCP 127.80 (5), 127.81 (2) (j), 127.82 (Title) and (1) and 127.82 (8); and *to create* ATCP
5 127.80 (6r) *relating to* telephone solicitations and the state do-not-call registry.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

This rule implements s. 100.52, Stats., which directs the department of agriculture, trade and consumer protection (DATCP) to promulgate rules related to telephone solicitations and the do-not-call registry and s. 100.20, Stats., which regulates fair trade practices in business.

Statutes Interpreted

Statutes Interpreted: 100.20 (1) and 100.52, Stats.

Statutory Authority

Statutory Authority: ss. 93.07 (1), 100.20 (2) and 100.52, Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 100.20 (2), Stats., to promulgate rules forbidding trade practices which DATCP determines to be unfair, and to prescribe fair trade practices. Section 100.52, Stats., directs DATCP to establish by rule a registration system for telephone solicitors that provides DATCP with proof that the telephone solicitor has complied with federal law in obtaining the state do-not-call registry.

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Section 100.20(1), Stats., requires trade practices in business to be fair. Unfair trade practices are prohibited. DATCP has rulemaking authority under s. 100.20 (2), Stats., to regulate unfair trade practices through administrative rules.

Section 100.52, Stats., governs telephone solicitations. Among other things, it directs DATCP to establish a registration system for telephone solicitors that provides DATCP with proof that the telephone solicitor has complied with federal law in obtaining the state do-not-call registry.

Chapter ATCP 127, Subchapter II, Telephone Solicitations, was promulgated under DATCP's authority to regulate unfair trade practices. Among other things, this subchapter requires telephone solicitors to disclose their name and prohibits them from using fictitious names or misrepresenting their identity, affiliation, location or characteristics.

The existing Chapter ATCP 127, Subchapter V, Telephone Solicitations; No-Call List, implements s. 100.52, Stats. This subchapter establishes mechanisms for telephone customers to enter their numbers onto the no-call list that is compiled by the state and for telephone solicitors to register with DATCP to obtain the list.

Plain Language Analysis

Background

Section 100.52, Stats., established the Wisconsin no-call program in 2001. DATCP promulgated chapter ATCP 127, subchapter V in 2002. This law required the department to create a no-call list and prohibited telephone solicitors from calling residential customers on the list. Residential customers who did not want to receive unsolicited commercial calls provided their telephone number and zip code to DATCP every two years to remain on the non-solicitation list.

The law also required the department to enact a rule that requires solicitors to register with DATCP and pay an annual fee to obtain the no-call list and solicit residential customers located in Wisconsin.

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Rule Content

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This emergency rule updates registration requirements for telephone solicitors. This rule requires telephone solicitors to provide DATCP with proof of registration with the FTC and the ability to obtain updated do-not-call registry information. The federal Subscription Account Number (SAN) will serve as proof of registration.

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This emergency rule repeals sections of the existing rule that became obsolete as a result of the statutory change. Sections of the rule that are repealed include those requiring consumers to register for the no-call list with DATCP, DATCP to provide the no-call list to telephone solicitors on a quarterly basis, and telephone solicitors to pay certain supplementary fees related to the provision of the no-call list.

Summary of and Comparison with Existing or Proposed Federal Statutes and Regulations

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The Federal Trade Commission (FTC) and Federal Communications Commission (FCC) administer the Telephone Consumer Protection Act (TCPA) which establishes the national do-not-call registry. Residential customers can permanently register their telephone numbers on the federal do-not-call registry.

Surrounding State Programs

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To develop this rule, DATCP reviewed federal and state laws related to telephone solicitations, data related to telephone solicitor registration, past enforcement actions, and consumer complaints.

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Offsetting this added fee, telephone solicitors will no longer be required to pay the following fees:

- \$25 for each additional email address to receive a compact disc containing the no-call list.
- \$25 for each mailing address to receive a compact disc containing the no-call list.
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DATCP Contact

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Where Comments May Be Submitted

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FINDING OF EMERGENCY

(1) FINDING OF EMERGENCY

1 (1) In Wisconsin, businesses wishing to solicit consumers by telephone must register
2 with the department and pay an annual registration fee.

3 (2) A recent statutory change eliminated Wisconsin’s separate no-call list and requires
4 telephone solicitors to use the Wisconsin portion of the national do-not-call registry.

5 (3) The law also requires the department to create telephone solicitor registration
6 requirements by rule that will show proof that the businesses have registered with the federal
7 trade commission’s do-not-call registry to obtain and use the Wisconsin portion of the national
8 do-no-call registry.

(4) The statutory change takes effect August 1, 2014. However, the permanent rule-making establishing these registration requirements will not be effective until mid-2015.

(5) The department must adopt registration requirements by emergency rule by August 1, 2014 so telephone solicitors can register with the department and comply with the law before the permanent rule is completed.

(6) This temporary emergency rule is necessary to protect the welfare of businesses that wish to register as telephone solicitors in Wisconsin. Without this emergency rule, telephone solicitors would not be able to register with the department and would not be able to comply with the no-call law.

EMERGENCY RULE

SECTION 1: ATCP 127, subchapter V (Title) is amended to read:

Subchapter V – Telephone Solicitations; ~~No-Call List~~ State Do-Not-Call Registry

SECTION 2: ATCP 127.80 (5) is repealed and recreated to read:

ATCP 127.80 (5) “National do-not-call registry” means the national database established by the federal trade commission under 47 USC 227 (c) (3) that consists of telephone numbers of residential customers who object to receiving telephone solicitations.

SECTION 3. ATCP 127.80 (6r) is created to read:

ATCP 127.80 (6r) “State do-not-call registry” means the portion of the national do-not-call registry that consists of numbers with Wisconsin area codes.

Section 4. ATPC 127.81 (2) (j) is repealed and recreated to read:

ATCP 127.81 (2) (j) The registrant's valid subscription access number (SAN) for the national do-not-call registry.

SECTION 5. ATPC 127.81 (3) (c), (d), (e) and (Note) are repealed.

1 **SECTION 6.** ATCP 127.82 (Title) and (1) are repealed and recreated to read:

2 ATCP 127.82 **Do-Not-Call Registry.** (1) OBTAINING THE REGISTRY. Registered
3 telephone solicitors must obtain and use a current state do-not-call registry from the national do-
4 not-call registry website at least once every 31 days.

5 **Note:** The state do-not-call registry can be obtained at this website
6 <https://telemarketing.donotcall.gov/>. Registration with the FTC and a valid Subscriber Access
7 Number are required.

8
9 **SECTION 7.** ATCP 127.82 (2) is amended to read:

10 ATCP 127.82 (2) SOLICITATIONS PROHIBITED. No person may make a telephone
11 solicitation, either directly or through an employee or agent, to a covered telephone customer
12 whose telephone number appears on the current ~~no-call list~~ state do-not-call registry. A
13 telephone solicitation made in violation of this subsection does not, by itself, result in a monetary
14 loss for which a current telephone customer may seek recovery under s. 100.20 (5), Stats., unless
15 that customer sustains an actual monetary loss as a result of another violation of this chapter.

16 **SECTION 8.** ATCP 127.82 (3), (4), (5), (6), and (7) are repealed.

17 **SECTION 9.** ATCP 127.82 (8) is repealed and recreated to read:

18 ATCP 127.82 (8) REGISTRY NOT OPEN TO PUBLIC INSPECTION. The department may not
19 release a state do-not-call registry except that the department may release a state do not call
20 registry as necessary to enforce this subchapter, or to comply with a subpoena or judicial
21 process, subject to any protective orders that may be necessary to ensure the confidentiality of
22 the list.

1 **SECTION 10. EFFECTIVE DATE:** This emergency rule takes effect upon publication, and
2 remains in effect for 150 days. The department may seek to extend this emergency rule as
3 provided in s. 227.24, Stats.

4 Dated this 11th day of July, 2014.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: Ben Brancel
Ben Brancel
Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Direct Marketing; Telephone Solicitations; No-Call List
Adm. Code Reference: ATCP 127
Rules Clearinghouse #: Not Applicable
DATCP Docket #: 14-R-09

Rule Summary

This emergency rule interprets the no-call law administered by the Department of Agriculture, Trade and Consumer Protection ("DATCP"). Among other things, this emergency rule does all of the following:

- Establishes updated registration requirements for telephone solicitors.
- Repeals portions of the rule made obsolete under the statute change.

Registration requirements

This emergency rule updates registration requirements for telephone solicitors. This rule requires telephone solicitors to provide DATCP with proof of registration with the FTC and the ability to obtain updated do-not-call registry information. The federal Subscription Account Number (SAN) will serve as proof of registration.

Obsolete rule provisions

This emergency rule repeals sections of the existing rule that became obsolete as a result of the statutory change. Sections of the rule that are repealed include those requiring consumers to register for the no-call list with DATCP and DATCP to provide the no-call list to telephone solicitors on a quarterly basis.

Small Business Affected

This emergency rule affects businesses in the following ways:

Telephone solicitors that are currently registered with DATCP but not with the FTC.

Under s. 100.52, Stats., and this rule, telephone solicitors will be required to register with DATCP and also with the FTC. Most telephone solicitors have been registered with both DATCP and the FTC and will not be impacted by this requirement. The few solicitors who have only registered with DATCP will incur an additional registration fee with the FTC. The first five area codes in a national do-no-call registry subscription are free, so this annual access fee would be \$59 for the 6th Wisconsin area code.

Offsetting this added fee, telephone solicitors will no longer be required to pay the following fees:

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- \$25 for each mailing address to receive a compact disc containing the no-call list.
- \$1,000 for each mailing address to receive the no-call list in a hard-copy printed form.

Accommodation for Small Business

Many of the businesses affected by this rule are "small businesses." However, given the subject matter, there are very few accommodations or special exceptions that can be made for small businesses.

This rule and DATCP's administrative efforts related to the rule benefit large and small businesses alike. For example:

- DATCP publishes a fact-sheet for solicitors, clearly explaining the requirements and prohibitions contained in the rule.
- DATCP administers and enforces violations of the rule which ensures a level playing field for all businesses.

Conclusion

This rule will have minimal impact on affected businesses, including "small businesses." Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

Dated this 11 day of July, 2014.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By


Sandra Chalmers, Administrator
Division of Trade & Consumer Protection

ADMINISTRATIVE RULES – FISCAL ESTIMATE

1. Fiscal Estimate Version

☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter Title and Number

ATCP 127 Direct Marketing

3. Subject

Direct Marketing: Telephone Solicitations; No-Call List

4. State Fiscal Effect:

<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input checked="" type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No May be possible to absorb within agency's budget.
		<input type="checkbox"/> Decrease Costs

5. Fund Sources Affected:

☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

6. Affected Ch. 20, Stats. Appropriations:

20.115(8)(jm)

7. Local Government Fiscal Effect:

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Decrease Costs

8. Local Government Units Affected:

☐ Towns ☐ Villages ☐ Cities ☐ Counties ☐ School Districts ☐ WTCS Districts ☐ Others:

9. Private Sector Fiscal Effect (small businesses only):

<input type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Revenues	<input type="checkbox"/> Increase Costs
	<input type="checkbox"/> Decrease Revenues	<input type="checkbox"/> Yes <input type="checkbox"/> No May have significant economic impact on a substantial number of small businesses
<input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Yes <input type="checkbox"/> No May have significant economic impact on a substantial number of small businesses	<input type="checkbox"/> Decrease Costs

10. Types of Small Businesses Affected:

Telephone Solicitors (Telemarketers)

11. Fiscal Analysis Summary

Under current rules, DATCP collects the following registration fees from telephone solicitors registering with the department, not to exceed \$20,000:

- (a) A basic annual registration fee of \$700 for the first year of registration and \$500 for each subsequent year.
- (b) A supplementary annual fee of \$75 for each telephone line. This fee does not apply if the registrant identifies fewer than 4 lines.
- (c) A supplemental fee of \$25 for each email address that will be sent the no-call list.
- (d) A supplemental fee of \$25 for each address receiving a set of compact discs.
- (e) A supplemental fee of \$1,000 for each address that will be sent a hard copy no-call list.

Since the department will no longer be providing copies of the state do-not-call registry to telephone solicitors (they must obtain it from the Federal Trade Commission's national do-not-call registry website), the supplemental fees under (c), (d) and (e) will no longer be collected.

12. Long-Range Fiscal Implications

This is a temporary emergency rule only, and will not have any direct long-term fiscal impact. However, the temporary changes in this emergency rule will be proposed to be made permanent through a separate rulemaking process. In the long-term, there may be a minor decrease in revenues as a result of the elimination of supplemental fees paid by registrants previously requesting multiple copies of the no-call list. This decrease in revenue can be absorbed by the department as the services covered by the fees will no longer be provided.

13. Name - Prepared by Jennifer Heaton-Amrhein	Telephone Number 608/224-5164	Date July 10, 2014
14. Name – Analyst Reviewer Jason Gherke	Telephone Number 608/224-4748	Date
Signature –Secretary or Designee	Telephone Number	Date

This document can be made available in alternate formats to individuals with disabilities upon request.